

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SAINT LUCIA

CLAIM NO. SLUHCV2008/0389

BETWEEN:

EUDES DOUGLAS BOURNE

Claimant/Respondent

And

BEVERLY ANN BORIEL ST. CLAIR

Defendant/Applicant

Appearances:

Mario R. F. Michel for Claimant/Respondent

Peter I. Foster with Renee St. Rose for Defendant/Applicant

2008: November 19;
2009: January 26.

DECISION

[1] **GEORGES, J.:** This is an application filed 29th October 2008 in which the defendant seeks to strike out the claimant's amended claim form and statement of case filed 10th June 2008 on the grounds that:

- (1) The action is prescribed by Article 2121(6) of the Civil Code of St. Lucia.
- (2) In the absence of writing from the defendant no action or exception can be maintained against her as the sum claimed by the claimant exceeds \$48.00 and

(3) There is no agreement in writing note or memorandum to maintain the claim for a disposition of an interest in land.

[2] In his claim filed 22nd April 2008 the claimant claims against the defendant Beverly Ann Boriel St. Clair (Ms. Boriel) the Administratrix of Louis Boriel:

1. Specific performance of an agreement and understanding to recompense him with one acre of land from Parcel 122 B 22 at Fond Sabot quarter of Vieux Fort (the lands) for consultancy and other services rendered to Louis Boriel.
2. Further or alternatively damages for breach of contract.
3. Alternatively \$261,360 being unpaid fees for consultancy and professional services rendered to Louis Boriel.

[3] In his amended claim form filed 10th June 2008 the claimant deleted paragraph 3 of the original claim and in his amended particulars of claim the claimant now claims:

1. Specific performance of the contract with Louis Boriel
2. A declaration that the claimant is entitled to a lien on the lands
3. Alternatively, \$25,000 being the open market value of the lands
4. General Damages
5. Further or other remedies
6. Costs
7. Interest.

[4] Article 2121 (6) of the Civil Code of St. Lucia states that:

The following actions are prescribed by six years:

6. For hire of labour or for the price of manual professional or intellectual work and materials furnished saving the exceptions (which do not apply to this case).

[5] Article 2129 of the Civil Code further states:

3. In all the cases mentioned in articles 2111, 2121, 2122, 2123 and 2124, the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired except in the case of promissory notes and bills of exchange, where prescription is precluded by a writing signed by the person liable upon them.

[6] The application to strike out is based in reality on two main grounds namely that the action is prescribed in that the claim was filed more than six years after the time limited for so doing had expired and secondly by virtue of section 37 (2) of the Land Registration Act 12 of 1984 (as amended) no action can be maintained for the disposition of any interest in land unless the agreement upon which such action is brought or some memorandum or note thereof is in writing and is signed by the party to be charged or by some other person thereunto by him or her lawfully authorised. Learned Counsel submitted that the claim before the court was devoid of any allegation of the existence in writing of a contract or memorandum or note in writing which could establish the existence of a contract between the deceased Louis Boriel and the claimant or the existence in writing of any promise to convey a parcel of land by Louis Boriel to the claimant.

[7] Counsel further submitted that although the claimant has not stated the amount of money he is claiming for his services he is claiming the transfer of property (land)

as recompense for provision of those services. The most which he could claim without evidence in writing under the laws of St. Lucia counsel submitted would be a sum not exceeding \$48.00.

[8] In a nutshell the facts giving rise to this claim as deduced from the claimant's amended particulars of claim are that the claimant a business and management consultant carrying on business from his premises at Vieux Fort alleges that over a 19 year period ending in 2001 he provided the deceased Louis Boriel with consultancy and professional services in return for which Boriel promised to recompense him with one acre of land at Fond Sabot Vieux Fort.

[9] In or around April 2000 Ms. Boriel assumed full responsibility for running the business affairs of her father Louis Boriel who had fallen gravely ill. Thereafter and continuing until the latter part of 2003 Ms. Boriel allegedly continued to engage the services of the claimant while at the same time giving him an undertaking that she would in due course transfer the lands to him.

[10] Louis Boriel died on 1st September 2001 before conveying the lands to the claimant pursuant to the alleged contract which the claimant asserts subsisted between the deceased and himself and continued to subsist until the latter part of 2003 with Ms. Boriel as Administratrix of Louis Boriel continuing to engage his services and undertaking in due course to transfer the lands to him and to fully honour the debts and obligations of the deceased Louis Boriel to him.

[11] By letter dated 4th December 2007 the claimant avers that he requested Ms. Boriel to honour the debt and obligations of Louis Boriel deceased to him but she has failed to do so hence the claim particulars of which are set out at paragraph 3.

[12] In support of his contention that the claimant's claim had been prescribed by Article 2121 (6) of the Civil Code Mr. Peter Foster learned counsel for the defendant pointed out that in his amended claim form the claimant sought to

extend the period of his alleged contractual services with Louis Boriel from the year 2001 in which Boriel died to the year 2003.

- [13] The prayer in the amended claim he continued contains an application for specific performance of the transfer of a parcel of land.
- [14] Counsel stressed that the claim was first of all prescribed by Article 2121 subparagraph 6 as set out at paragraph 4 herein and none of the exceptions applied. The alleged contractual claim was clearly brought after the prescribed period of six years and the disingenuous attempt by the claimant to prolong the period over which consultancy and professional services were allegedly rendered by him to Louis Boriel beyond 1 September 2001 to 2003 is in my view of no avail and singularly fails since the original claim as well as the amended claim are both clearly prescribed by the six year limitation period.
- [15] Counsel further contended that the claim is essentially for professional and consultancy services brought against the Estate of the late Louis Boriel for services provided during his lifetime. He died on 1st September 2001 and the claim lies against his estate and certainly not against Ms. Boriel in her personal capacity. I fully agree.
- [16] In fact in the prayer of the claim form as well as the statement of case the claim is still against Louis Boriel and not against his daughter Beverly Ann Boriel St. Clair. The claim still remains a claim for consultancy services provided to Louis Boriel and the prescription period would still remain at 1st September 2001 the date on which Louis Boriel passed away. Any claim for services provided to Beverly Ann Boriel St. Clair would have had to be made against her in her personal capacity as the alleged agency between Beverly Ann and her father Louis Boriel would clearly have ceased on his death.

[17] Article 2085 states that only service of a claim before the prescribed period can interrupt prescription. The claimant failed to serve the defendant with a claim within the prescribed period. This is fully illustrated in Civil Appeal No. 42 of 2005 in David Sweetnam et al v the Government of Saint Lucia where Gordon J.A at paragraph 11 declared that prescription in St. Lucia is only interrupted civilly by the commencement of a suit before a court of competent jurisdiction and the proper service of such suit on the party whose prescription it is sought to interrupt.

[18] Furthermore the claimant has no proof in writing of the alleged contract undertaking and or debts and obligations under which his claim is brought and is unable to give oral testimony and cannot maintain an action against the defendant in this matter as the sum claimed exceeds \$48.00.

[19] Article 1163 (2) states that:

2. Proof may be by testimony in a matter in which the principal sum of money or value in question does not exceed fortyeight dollars.

[20] Moreover as stated earlier by virtue of section 37 (2) of the Land Registration Act in the absence of an agreement in writing note or memorandum thereof the claimant cannot maintain an action for a disposition of an interest in land which in effect is what the claimant seeks specific performance of. Judicial support for that proposition learned counsel pointed out was to be found in the Court of Appeal decision in Dahlia Ltd v Four Millbank Nominees Ltd & Another [1978] 1 Ch 231 where the Court in upholding Brightnan J declared that although a contract was not for the sale of land or an interest in land it was a contract concerning the disposition of an interest in land therefore section 40 (1) of the Law of Property Act 1925 which is similar to section 37 (2) of the Land Registration Act 1984 as amended applied and the statement of claim as against the first defendants was struck out as disclosing no cause of action in that there was no note or

memorandum of the agreement sufficient to satisfy section 40 (1) of the Law of Property Act 1925.

[21] I respectfully adopt the ratio of that case as being applicable to the facts of the instant case and that the claimant's statement of case ought to be struck out as disclosing no cause of action in that there is no note or memorandum of the agreement to satisfy section 37(2) of the Land Registration Act.

[22] In his rebuttal learned counsel for the claimant submitted that none of the conditions precedent to striking out a statement of case as set out in rule 26.3 (1) had been satisfied by the defendant. I disagree for rule 26.3 (1) (a) (b) and (d) stipulate that:

In addition to any other power under these Rules the court may strike out a statement of case or part of a statement of case if it appears to the court that:

- (a) there has been a failure to comply with a rule practice direction order or direction of the court in the proceedings,
- (b) the statement of case or the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings, or
- (c) the statement of case or the part to be struck out is prolix or does not comply with the requirements of Part 8 or 10.

And in particular Rule 8.7 (1) requires that:

The claimant must include in the claim form or in the statement of claim a statement of all the facts on which the claimant relies.

And this is precisely the point with which counsel for the defendant took issue namely that the claimant's claim apart from being prescribed could not maintain an action for a disposition of an interest in land.

[23] Counsel for the claimant further submitted that Ms. Boriel was sued as administratrix of Estate of Louis Boriel and not in her personal capacity. The provision of professional and consultancy services to Louis Boriel in his lifetime continued to his estate after his death until the latter part of the year 2003 the claimant alleged. The claim learned counsel alleged was consistent with Article 2121 (6) of the Civil Code and could not have been prescribed until the latter part of 2009. That contention is entirely rejected for the reasons stated at paragraph 14.

[24] Mr. Michel further argued that the absence in writing of the alleged contractual agreement between Louis Boriel and himself could not be entertained before trial of the matter. Article 1163 of the Civil Code he declared provides several ways in which a claim can be proved and it was only at the trial of the matter that one could determine whether the claim can be proved. Writing he added would have to be provided at trial. That contention clearly ignores the requirement of Rule 8.7 (1) of the CPR which enjoins that the claimant must include in the claim form or in the statement of claim a statement of all the facts on which he relies. The absence of any allegation or existence in writing of the alleged contractual agreement between the claimant and Louis Boriel in the claim and statement of claim is clearly in my view a grave lacuna in the claimant's case. There is no need for further elaboration on that point or of the issue relating to the impact of section 37 (2) of the Land Registration Act on the claimant's case which has been fully dealt with earlier.

[25] In the result the claimant's amended claim and statement of case are struck out for the reasons stated.

[26] Costs to the defendant in the sum of \$4,050.00 in accordance with Rule 65.11 (7) of the CPR.

[27] As a postscript I would add that it passes by no means as a little strange that in the original claim filed on 22nd April 2008 the monetary value of the claimant's claim was put at \$261, 360.00 and in the amended claim filed 10th June 2008 that amount had dwindled to \$25,000.00.

EPHRAIM GEORGES
HIGH COURT JUDGE (AG.)